

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/751,362
Inventor(s) : Nair et al.
Filed : January 5, 2004
Art Unit : 3761
Examiner : Ginger T. Chapman
Docket No. : AA611
Confirmation No. : 2195
Customer No. : 27752
Title : Absorbent Product Containing Absorbent Articles Each
Having Different Graphic

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on February 1, 2011.

A timely Notice of Appeal was filed on May 2, 2011, making this Appeal Brief due on or before July 5, 2011 (as July 2, 2011, fell on a Saturday, and July 4, 2011 was a Federal Holiday which fell on a Monday).

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1, 9, 11, 22-24, 30, and 32-34 are rejected. Claims 2-8, 10, 12-21, and 31 are cancelled. Claims 25-29 are withdrawn.

Claims 1, 9, 11, 22-24, 30, and 32-34 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is drawn to an absorbent product (500) comprising a package (100) and at least n absorbent articles (201-20n) contained in the package, wherein n is greater than 10. (*See, for example*, page 5, lines 32-34; page 6, lines 1-2; and Fig. 1). Each of the absorbent articles comprises: a topsheet (54), a backsheet (52), and an absorbent core (66) disposed between the topsheet and the backsheet. (*See, for example*, page 9, lines 22-34; page 10, lines 1-2; and Figs. 2-3). The topsheet (54) and the backsheet (52) define a first waist region longitudinally opposed to a second waist region, wherein the first and second waist regions are connectable with each other to form a waist opening. (*See, for example*, page 11, lines 27-33; page 12, lines 1-2; and Figs. 2-3). Each of the absorbent articles further comprises a visible framing mark and a printed graphic (G1-Gn) printed directly on the backsheet (52). (*See, for example*, page 6, lines 7-17; page 14, lines 7-28; and Figs. 1-3). The printed graphic (G1-Gn) of each of the n absorbent articles (201-20n) is different from the graphic of each of the remaining absorbent articles, and all of the printed graphics of the n absorbent articles have a predetermined association, wherein the predetermined association includes a common theme. (*See, for example*, page 6, lines 13-28; page 8, lines 10-14; and Figs. 1-3). The backsheet (52) of each of the absorbent articles (201-20n) comprises a microporous film (53) material extending from the first waist region to the second waist region and has a

body facing surface and a garment facing surface, and each printed graphic is printed directly on the garment facing surface of the microporous film material (53). (*See, for example*, page 5, lines 14-19; page 6, lines 7-17; page 10, lines 3-30; and Figs. 2-3). The backsheet of each of the absorbent articles further comprises a nonwoven material (55) joined with the garment facing surface of the microporous film material (53), and the printed graphic (G1-Gn) is visible through the nonwoven material (55). (*See, for example*, page 10, lines 3-30; and Figs. 2-3).

Independent claim 30 is drawn to an absorbent product (500) comprising a package (100) and at least n absorbent articles (201-20n) contained in the package, wherein n is greater than 10. (*See, for example*, page 5, lines 32-34; page 6, lines 1-2; and Fig. 1). Each of the absorbent articles comprises: a topsheet (54), a backsheet (52), and an absorbent core (66) disposed between the topsheet and the backsheet. (*See, for example*, page 9, lines 22-34; page 10, lines 1-2; and Figs. 2-3). The topsheet (54) and the backsheet (52) define a first waist region longitudinally opposed to a second waist region, wherein the first and second waist regions are connectable with each other to form a waist opening. (*See, for example*, page 11, lines 27-33; page 12, lines 1-2; and Figs. 2-3). The backsheet (52) comprises a sheet of material extending from the first waist region to the second waist region, and each of the absorbent articles further comprises a visible framing mark and a printed graphic (G1-Gn) printed directly on the sheet of material. (*See, for example*, page 6, lines 7-17; page 14, lines 7-28; and Figs. 1-3). The printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles, and all of the printed graphics of the n absorbent articles have a predetermined association, wherein the predetermined association includes a common theme. (*See, for example*, page 6, lines 13-28; page 8, lines 10-14; and Figs. 1-3).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- I. Whether the rejection of claims 1, 9, 11, 22-24, 30, and 32 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,818,719 in the name of Brandon

et al. (hereinafter "Brandon") in view of U.S. Patent No. 5,503,076 in the name of Yeo et al. (hereinafter "Yeo") and further in view of U.S. Patent No. 6,558,499 in the name of Pargass et al. (hereinafter "Pargass"), is erroneous and should be reversed.

- II. Whether the rejection of claims 33 and 34 under 35 U.S.C. §103(a) as unpatentable over Brandon in view of Yeo in view of Pargass and further in view of PCT Patent Publication No. WO00/13632 in the name of Stavrulov (hereinafter "Stavrulov"), is erroneous and should be reversed.

ARGUMENTS

- I. The rejection of claims 1, 9, 11, 22-24, 30, and 32 under 35 U.S.C. §103(a) as unpatentable over Brandon in view of Yeo and further in view of Pargass is erroneous and should be reversed, because the cited combination of Brandon, Yeo, and Pargass fails to teach or suggest all the claim limitations of the claims and there was no apparent reason to combine and further modify the asserted references in the fashion claimed.

It is respectfully submitted that the Examiner has not established a prima facie case of obviousness, because the cited combination of Brandon, Yeo, and Pargass fails to teach or suggest all the claim limitations of independent claims 1 and 30.

The Examiner asserts that Brandon discloses the claimed invention except for a product comprising a package; at least n articles contained in the package, wherein n is greater than 10; and the printed graphic of each of the n articles is different from the graphic of the remaining articles. (See Office Action, Pages 15-16). In addition, the Examiner asserts that Brandon discloses that graphics can be different and discloses many selections of different graphics, thus providing motivation for different graphics. (See Office Action, page 16). However, Brandon does not disclose different graphics on diapers contained in a package. As such, the Examiner committed error by providing no reasoning as to why one of ordinary skill in the art would modify Brandon include a package containing 10 or more of the diapers of Brandon, each diaper including a printed

graphic, and wherein the printed graphic of each of the *n* diapers is different from the graphic of each of the remaining diapers. The obviousness inquiry requires a determination of “whether there was an apparent reason to combine the known elements in the fashion claimed To facilitate review, this analysis should be made explicit.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citations omitted) (emphasis added). Here, without more, the Examiner erroneously concludes that the mere disclosure that graphics can be different provides motivation for different graphics on articles contained in a package.

Next, the Examiner cites Pargass as disclosing different graphics printed directly on backsheet. (See Office Action, pages 16-17). Claim 1 recites that the graphics are printed directly on the backsheet (as opposed to a patch connected with the backsheet) by reciting that the microporous film material extends from the first waist region to the second waist region. In particular, claim 1 recites a backsheet comprising a microporous film material extending from the first waist region to the second waist region and having a body facing surface and a graphic printed directly on the garment facing surface of the microporous film material. Claim 30 recites a backsheet comprising a sheet of material extending from the first waist region to the second waist region and a printed graphic printed directly on the sheet of material.

In contrast to claims 1 and 30, Pargass discloses a diaper having a graphic printed on a patch, which may be joined with a backsheet. More particularly, Col. 8, ll. 47-48 of Pargass states: “Fig. 4a shows a method for making an appliqué layer 26 by placing a graphic 21 on a moving non-woven web, which forms the backsheet to the absorbent article.” (emphasis added). For clarity, Figures 4A and 5A of Pargass are reproduced below with reference numbers of particular interest being circled.

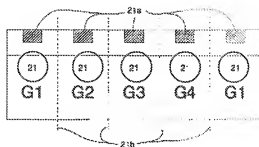


FIG. 5A

With regard to Figure 5A, Pargass discloses that the graphics 21 are provided from a first MD continuously moving layer or master roll 32, which has a plurality of graphics 21 and a corresponding plurality of reference markers 21a printed thereon. (See Col. 8, ll. 51-55). With further regard to Figure 4A, Pargass describes in more detail a method by which the graphics are applied to a nonwoven outer layer 22.

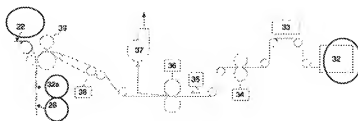


FIG. 4A

In particular, Pargass discloses that the continuously moving master roll 32 is conveyed by conveyor 34 and a photo-eye or optical sensor 35 detects the reference markers 21a. Once the reference markers 21a have been sensed or detected, they can be removed by any suitable means, and once the reference markers 21a are removed, the master roll 32 (without any reference markers whatsoever) is conveyed forward by servodrive 38 to cutting means 39. At cutting means 39, master roll 32 is cut at predetermined locations 21b to form individual segments 32a, which are then applied to non-woven outer layer 22 to form applique layer 26. (emphasis added). (See Col. 9, ll. 26-35). In sum, the method of making absorbent articles in Pargass prints the graphics 21 on a continuously moving layer or master roll 32 and cut into individual segments 32a, which are applied to an outer

layer 22. As such, Pargass does not teach or suggest printing graphics directly on backsheets as recited claims 1 and 30.

As discussed above, Brandon does not teach or suggest a product including absorbent articles having different graphics printed thereon contained in a package, as recited in claims 1 and 30. And the Examiner has not provided motivation for modifying Brandon to include such claim limitations. In addition, Pargass does not teach or suggest printing graphics directly on backsheets or sheets as recited in claims 1 and 30. And modifying the backsheets of Brandon by including the printed patches the Pargass would not meet all the claim limitations recited in claims 1 and 30.

Yeo is cited as disclosing a microporous film. As such, Yeo does not correct the deficiencies discussed above with respect to Brandon and Pargass.

The Examiner also erroneously concludes that the limitation that the graphics are different from each other is drawn to the content of printed matter. (See Office Action, Page 17). It is respectfully submitted that a claim limitation relating to graphics that are different from each other is not drawn to the content of printed matter. (emphasis added). Instead, when taken in the context of language of the entirety of claims 1 and 30, limitations relating to absorbent articles having graphics different from each other contained in a package are drawn to structural differences, not merely the content of printed matter.

In addition, the Examiner concludes that the claimed common theme, i.e. the content of graphics, do not lend additional patentable weight because if articles were patented based on differences in graphics, multiple patents could issue indefinitely for the same article by simply changing the content of the graphic. (See Office Action, pages 18-19). “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), see also *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007). Differences between an invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. (*In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983). Under section 103, the board cannot

dissect a claim, excise the printed matter from it, and declare the remaining portion of the mutilated claim to be unpatentable. (*Id.*) The obviousness inquiry requires a determination of “whether there was an apparent reason to combine the known elements in the fashion claimed To facilitate review, this analysis should be made explicit.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (citations omitted) (emphasis added). Here, the Examiner erroneously excises the claimed common theme from claims 1 and 30 without considering the claimed common theme in the context of the claims as a whole.

If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). For at least the reasons provided above, the Examiner has not produced a *prima facie* case of unpatentability of claims 1 and 30. As such, claims 1 and 30 are believed patentable under 35 U.S.C. § 103 over Brandon in view of Yeo, and further in view of Pargass.

Claims 9, 11, and 22 and claims 23, 24, and 32 depend from and include all the limitations of claims 1 and 30, respectively. As such, for at least the same reasons discussed above with reference to claims 1 and 30, claims 9, 11, 22-24, and 32 are also patentable under 35 U.S.C. § 103(a) over the cited references.

- II. The rejection of claims 33 and 34 under 35 U.S.C. §103(a) as unpatentable over Brandon in view of Yeo in view of Pargass and further in view of Stavrulov is erroneous and should be reversed because the asserted combination of Brandon, Yeo, Pargass, and Stavrulov does not teach or suggest all the claim limitations and there was no apparent reason to combine and further modify the asserted references in the fashion claimed.

As discussed above, it is believed claims 1 and 30 are patentable under 35 U.S.C. § 103(a) over the asserted combination of Brandon, Yeo, and Pargass. Stavrulov does not correct the deficiencies of Brandon, Yeo, and Pargass. Thus, claims 1 and 30 are believed patentable under 35 U.S.C. § 103(a) over the asserted combination of Brandon,

Yeo, Pargass, and Stavrulov. Claims 33 and 34 depend from and include all the limitations of independent claims 1 and 30, respectively. As such, for at least the same reasons discussed above with reference to claims 1 and 30, claims 33 and 34 are also believed patentable under 35 U.S.C. § 103(a) over the cited references.

In addition, dependent claims 33 and 34 recite that the printed graphics are printed directly on each sheet of the n absorbent articles in a randomly selected order and the n absorbent articles are stacked in the package in the randomly selected order.

The Examiner made various assertions that the aforementioned claim limitations do not patentably distinguish the claimed invention over the prior art, which are addressed below. (See Office Action, Page 21-24).

The Examiner initially refers to claims 1 and 30, and in particular, the claimed predetermined association and common theme and asserts that these limitations are drawn to a mental process and therefore do not lend additional patentable weight. (See Office Action, Page 21). It is respectfully submitted that the Examiner's rationale here is erroneous. The elements of "wherein the predetermined association includes a common theme" recited in claims 1 and 30 are not mental processes.

The Examiner also asserts that the decision of how to package diapers in randomly selected orders or non-randomly selected orders is not a structural limitation, but rather is the result of a mental process. (See Office Action, Page 22). In contrast to the Examiner's assertions, claims 33 and 34 do not recite a mental process as to how to decide to package absorbent articles. Instead, claims 33 and 34 recite the structural limitations that define the n absorbent articles as being stacked in the package in the randomly selected order.

Claims 1 and 30 recite an absorbent product comprising, among other elements, a package and at least n absorbent articles contained in the package. Claims 33 and 34 recite structural limitations in that the n absorbent articles are stacked in the package in the randomly selected order. In contrast to the Examiner's assertion, an absorbent product having absorbent articles stacked in a package in a randomly selected order is not merely a mental process.

The Examiner also asserts that the articles of Brandon are capable of being placed in a randomly selected order. (See Office Action, Page 22). It is respectfully submitted that an assertion that the prior art can be modified, without more, does not render does not render the pending claims obvious. (See MPEP 2143.01).

In addition, the Examiner asserts that the structural elements of the diapers do not change if the order in the package is rearranged differently thus the order in which the diapers are placed in the package does not affect the diaper structure, and therefore, this limitation does not lend additional patentable weight. (See Office Action, Page 22). It is respectfully submitted that the Examiner's reasoning is erroneous. Claims 1 and 30 are drawn to absorbent products comprising, among other limitations, a package and absorbent articles contained in the package. The order in which the absorbent articles are arranged in the package is a structural limitation of the absorbent product (i.e. the subject matter of the claims) and therefore does lend patentable weight. (emphasis added).

The Examiner also asserts that "if products were patented based on simply changing the order in which they are placed in a package, multiple patents could issue indefinitely for the same product merely by placing them in a package in a different order." (See Office Action, Page 22). It is respectfully submitted that the Examiner's assertion on Page 22 is not based upon objective rationale stemming from an analysis of whether the claim is novel and/or unobvious.

Next, the Examiner asserts that in view of the teachings of Stavrulov, it would have been obvious to modify Brandon, Yeo, and Pargass to include graphics printed in a randomly selected order. (See Office Action, Page 23-24). The prior art must be considered in its entirety, including disclosures that teach away from the claimed invention, and it is improper to combine references where the references teach away from their combination. (See MPEP 2145 X.D.). In contrast to claims 33 and 34, Pargass teaches articles with distinct repeating graphics in packages. (emphasis added). (See Col. 5, ll. 2-6; and Col. 15, ll. 58-63). As such, Pargass teaches away from the claimed invention as well as the asserted combination with Stavrulov.

If examination at the initial stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re*

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Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992). For at least the reasons provided above, the Examiner has not produced a prima facie case of unpatentability of claims 33 and 34. As such, claims 33 and 34 are believed patentable under 35 U.S.C. § 103 over Brandon in view of Yeo, Pargass, and further in view of Stavulov.

Reversal of this rejection is courteously solicited.

SUMMARY

In view of all of the above, it is respectfully submitted that all of the rejections of record are erroneous and should be reversed.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By 

Charles R. Matson
Registration No. 52,006
(513) 983-8579

Date: July 5, 2011

Customer No. 27752

(Appeal Brief.doc)
Revised 2/12/09

CLAIMS APPENDIX

1. An absorbent product comprising a package and at least n absorbent articles contained in the package, wherein n is greater than 10, each of the absorbent articles comprising: a topsheet, a backsheet, and an absorbent core disposed between the topsheet and the backsheet, the topsheet and the backsheet defining a first waist region longitudinally opposed to a second waist region, wherein the first and second waist regions are connectable with each other to form a waist opening, each of the absorbent articles further comprising a visible framing mark and a printed graphic printed directly on the backsheet; and

wherein the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles, and wherein all of the printed graphics of the n absorbent articles have a predetermined association;

wherein the backsheet of each of the absorbent articles comprises a microporous film material extending from the first waist region to the second waist region and having a body facing surface and a garment facing surface, and wherein each printed graphic is printed directly on the garment facing surface of the microporous film material; and

wherein the backsheet of each of the absorbent articles further comprises a nonwoven material joined with the garment facing surface of the microporous film material, and wherein the printed graphic is visible through the nonwoven material; and wherein the predetermined association includes a common theme.

9. The absorbent product of Claim 1, wherein the common theme includes cartoon characters, transportation means, animals, fruits, vegetables, plants, and seasonal themes.

11. The absorbent product of Claim 1, wherein n is selected from 11 to 120.

22. The absorbent product of Claim 1, wherein each printed graphic is an inkjet printed graphic.

23. The absorbent product of Claim 30, wherein the sheet of material extending from the first waist region to the second waist region of the backsheet of each of the absorbent articles is a microporous film material having a body facing surface and a garment facing surface, and wherein each printed graphic is printed directly on the garment facing surface of the microporous film material.

24. The absorbent product of Claim 23, wherein the backsheet of each of the absorbent articles further comprises a nonwoven material joined with the garment facing surface of the microporous film material, and wherein the printed graphic is visible through the nonwoven material.

30. An absorbent product comprising a package and at least n absorbent articles contained in the package, wherein n is greater than 10, each of the absorbent articles comprising: a topsheet, a backsheet, and an absorbent core disposed between the topsheet

and the backsheet, the topsheet and the backsheet defining a first waist region longitudinally opposed to a second waist region, wherein the first and second waist regions are connectable with each other to form a waist opening, and wherein the backsheet comprises a sheet of material extending from the first waist region to the second waist region, each of the absorbent articles further comprising a visible framing mark and a printed graphic printed directly on the sheet of material; and

wherein the printed graphic of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles, and wherein all of the printed graphics of the n absorbent articles have a predetermined association; and wherein the predetermined association includes a common theme.

32. The absorbent product of Claim 30, wherein each printed graphic is an inkjet printed graphic.

33. The absorbent product of Claim 1, wherein the printed graphics are printed directly on each backsheet of the n absorbent articles in a randomly selected order and the n absorbent articles are stacked in the package in the randomly selected order.

34. The absorbent product of Claim 30, wherein the printed graphics are printed directly on each sheet of the n absorbent articles in a randomly selected order and the n absorbent articles are stacked in the package in the randomly selected order.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.